scandalizing the court itself have become obsolete in this country. Courts are satisfied to leave to public opinion attacks or comments derogatory or scandalous to them." *McLeod* v. *St. Aubeyn* [1899] A. C. 549, 561. One year later, however, an editor was fined £100 for just such a publication. *Reg.* v. *Gray* [1900] 2 Q. B. 36. In the United States a publication of this kind was held to be in contempt in a few early cases. *Respublica* v. *Oswald* (1788) 1 Dall. 319. Although there are later *dicta* to the same effect, no recent case has been found which actually goes so far. There are on the contrary a large number of cases denying any such right. *Dunham* v. *State* (1858) 6 Ia. 245; *Storey* v. *People* (1875) 79 Ill. 45, 53. The judge attacked is considered unfitted to try the issue, for the truth of the publication is generally recognized as a defense in these cases. *McClatchy* v. *Superior Court* (1897) 119 Cal. 413. In New York the whole subject is governed by statute, and it is held that although a false account of proceedings in a court is contempt, a libelous accusation of a judge is not. *People ex rel. Barnes* v. *Albany Court of Sessions* (1895) 147 N. Y. 290, 297.

The general question is one more of policy than of law. Few will deny the expediency of punishing summarily the publication of matters tending to deprive an accused person of a fair and impartial trial. On the other hand the wisdom of allowing a judge so to punish personal attacks upon himself may well be doubted. As a direct result of the impeachment of Judge Peck of the United States District Court for the district of Missouri for using the power arbitrarily, 5 Crim. Law Mag. 178, Congress passed the act of March 2, 1831, by which the Federal courts are forbidden to punish by contempt proceedings offences not committed in the immediate presence of the court or in resistance to legal process. U. S. Rev. St. § 725. The temptation to use the power unjustly is well illustrated by the case of *State* v. *Circuit Court* (1897) 97 Wis. 1. A judge, who was a candidate for reelection, was accused by a newspaper of corruption. On being ordered to show cause why he should not be punished for contempt the editor answered that the charges were true. The judge ruled that this was no defense, but a new contempt committed in the face of the court. The Supreme Court, however, reversed this ruling, saying that "it must be a grievous and weighty necessity which will justify so arbitrary a proceeding whereby a candidate for office becomes the accuser, judge and jury and may within a few hours summarily punish his critic by imprisonment." P. 12. All in all the policy of the American courts in restricting summary contempt proceedings against newspapers to cases where the publication tends directly to obstruct or pervert the course of justice in a case then pending in the courts, seems preferable to that of *Reg.* v. *Gray, supra.*

SPECIAL PARTNER AS CREDITOR.—Limited partnerships are not recognized at common law, nor have they ever been authorized by statute in Great Britain. It was from the laws of France that the

draughtsmen of the first American legislation on the subject took the principles which were embodied in the New York statute of 1822. The doctrine of limited partnership liability has found general acceptance in this country and at the present time the system is in operation in all but two or three of our jurisdictions. Although principles were borrowed from other sources, the statutes have been construed according to the rules of the English law. For many years this legislation was treated with severity by the New York courts as being in derogation of the common law, but the modern tendency of the bench is to regard it with favor, as a substantial aid to commerce and therefore entitled to liberal encouragement. While the statutes of the different States are quite similar, the position of a special partner claiming as creditor of his firm is not everywhere the same. In the absence of express provision he would be entitled to be treated as an ordinary creditor, coming in with the other claimants in case of the firm's insolvency. Burdick on Part. 392. But legislation regulating his rights in such a contingency is quite general. Some States postpone his claim until all other obligations of the insolvent partnership have been discharged, while others make such postponement subject to certain exceptions. The latter rule is that which has found favor in New York, where section 37 of the Partnership Law provides: "A special partner may * * * loan money to and advance and pay money for the partnership * * * and may use and lend his name and credit as security for the partnership, in any business thereof, and has the same rights and remedies in these respects as other creditors might have. If such partnership becomes insolvent a special partner shall not, except for claims contracted in pursuance of this section, be allowed to claim as creditor, until the claims of all the other creditors are satisfied."

In the recent New York case of *Matter of Price, McCormick & Co.* (1902) 68 App. Div.—, the court passed upon an interesting state of facts. One Crocker, a special partner in a brokerage firm, had a speculative account with the partnership, and was heavily indebted thereto, though his indebtedness was amply secured by stock deposited as collateral. The firm had made a general assignment for the benefit of creditors, having previously repledged C.'s stock to secure loans made by various bankers. Being unable, for this reason, to obtain the surrender of his stock upon a tender to the assignee of the amount of his debt, C. was compelled to pay the market value of his shares to the aforesaid bankers in order to regain possession of his property. Upon suit brought against the assignee, to recover the difference between the sum paid and the amount of his indebtedness to the insolvent firm, the referee held that, inasmuch as the petitioner was a special partner, he was not entitled to stand on an equality with the other creditors. The Appellate Division holds that this ruling was erroneous; for the assignment worked a dissolution of the firm, *Welles* v. *March* (1864) 30 N. Y. 350; and the petitioner's claim arose, therefore, when his relation to the firm as a special partner was no longer in existence.

Hence he should be allowed to assert his rights with the other creditors, for the statute applies only to the maintenance of demands by special partners. Only one case is cited for this contention, but it seems sound and in accordance with the policy of the statutes dealing with this branch of the law. In the decision referred to the court says: "None of the evils which the legislature intended to guard against could arise from the fact that the special partner became a creditor after the dissolution of the partnership." *Hayes* v. *Heyer* (1866) 35 N. Y. 326. But if the case did come within section 37, *supra*, as the referee thought, the conclusion reached might well be the same. For, while C.'s claim arose out of a payment to the bankers made to serve his own ends, he did, nevertheless, "pay money for the partnership," inasmuch as he liquidated a portion of the firm's indebtedness. Moreover, his demand seems to come within another exception named in the section. The firm, having obtained loans by the use of the petitioner's stock, could not deny that he had lent "his name and credit as security for the partnership," for the advances were, in fact, induced by the use of his credit.

BANKRUPTCY—PREFERENCE—ATTACHMENT. A petition in involuntary bankruptcy can be filed only by creditors having provable claims. Sec. 59. As a preferred creditor may not prove his claim until he has surrendered his preference (sec. 57 g), he may not, so long as he remains a preferred creditor, file a petition. Preference is defined by section 6, as a judgment or transfer. But the true significance of these terms is to be gathered from the purpose of the inhibition, as the act itself sets it forth—that no creditor shall receive a greater proportion of his debt than other creditors in the same class. Sec. 60 a. *Pirie* v. *Trust Co.* (1901) 182 U. S. 438.

On the question of attachment the decisions rendered under the act of 1867 are unavailing, for the two acts differ materially respecting preferences, *Wilson Bros.* v. *Nelson*, 7 Am. B. R. 142; and the courts varied widely in interpreting this feature of the 1867 act. DILLON, J., *In re Scrafford* (1877) Fed. Cases, 12556, denied an attaching creditor the right to petition, because an attachment was deemed a security, and secured creditors might not petition. *In re Frost* (1874) Fed. Cases, 5134. On the other hand, DYER, J., *In re Broich* (1876) Fed. Cases, 1921, declared an attaching creditor to be an unsecured creditor.

Under the 1898 act, SEAMAN, J., *In re Burlington Malting Co.* (1901) 6 Am. B. R. 369, has decided that an attachment constitutes a preference. This decision has lately been repudiated by *In re Schenhien* (1902) 7 Am. B. R. 162. But in the latter case it was the letter rather than the spirit of the act which was regarded. An attachment was there said to be neither judgment nor transfer; hence not within the purview of sec. 60 a and 57 g. However, it cannot be doubted that were the estate distributed, to him who holds an attachment would go a greater proportion of his debt than